

**ADDENDUM B**

**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

**AGENCY APPEAL PRE-ARGUMENT STATEMENT (FORM C-A)**

**1. RELIEF REQUESTED**

Constellation requests that the Court grant the petition for review and set aside the Board's decision as to the appropriate collective bargaining unit. At a minimum, the matter should be remanded to the Board with instructions to apply the appropriate legal standard or to further explicate the reasons for its decision.

**2. PROPOSED ISSUES**

1. Whether a group of cellar employees, which amounts to only a subset of a winery's production-and-maintenance employees and only a fraction of the cellar department, constitutes a "unit appropriate for the purposes of collective bargaining" under the NLRA.

2. Whether the NLRB's "overwhelming community of interest" test, as set forth in *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 N.L.R.B. No. 83, 2011 NLRB LEXIS 489 (Aug. 26, 2011), and as applied in this case, is improper for at least three independent reasons:

a. It impermissibly affords controlling weight to the union-proposed unit in violation of the NLRA.

b. It departs from past Board precedent without a reasoned explanation.

c. It violates the Administrative Procedure Act because it was improperly promulgated through adjudication rather than rulemaking.

### **3. STANDARD OF REVIEW**

For all of the issues above, this Court reviews the Board's actions to determine whether they are "arbitrary, capricious, or unreasonable" and to assess whether they are "supported by substantial evidence in the record." *N.L.R.B. v. Meyer Label Co.*, 597 F.2d 18, 20 (2d Cir. 1979). Enforcement of the Board's orders must be denied where "the proper legal standard was not applied." *Ford Motor Co. v. N.L.R.B.*, 441 U.S. 488, 497 (1979).